messenger boy on the other." The latter remark was excepted to. *Held*, error justifying a new trial. *Meadows* v. *Western Union Tel. Co.* (1902), — N. Car. —, 42 S. E. Rep. 535.

The ground for the conclusion was that, under the circumstances, this language of the judge "was likely to convey to the jury his opinion of the weight of the evidence."

TRUSTS—DEPOSITS IN AN INSOLVENT BANK—RIGHT TO FOLLOW AS A TRUST FUND.—A bank received public funds from the plaintiff, its officers knowing at the time that it was insolvent. A statute provided that public funds, deposited with banks, under such circumstances should be held as trust funds. The deposit had been mingled with other moneys of the bank, and could be traced to no particular property in the hands of the defendant, the receiver. In a suit to establish a trust, *Held*, that the assets in the hands of the receiver were impressed with a trust. *Fogg* v. *Hebdon* (1902), — Miss. —, 32 So. Rep. 285.

The decision is in accord with the "modern doctrine" of equity, and with the weight of authority. *Knatchbull* v. *Hallett* (1879), L. Rep. 13 Ch. D. 696, 41 Law T. R. N. S. 186, 48 Law J. R. 734, Ch.; *National Bank* v. *Insurance Co.* (1881), 104 U. S. 54, 26 L. ed. 693. Some American courts still adhere to the old rule that money has no ear marks, and that its identity is lost by a mingling. *Portland, etc., Steamship Co.* v. *Locke* (1882), 73 Me. 370; *Bayor* v. *American, etc., Bank* (1895), 157 Ill. 62. 41 N. E. 622. But the money must be traced to the mass sought to be charged. *Englar* v. *Offutt* (1889), 70 Md. 78, 14 Am. St. R. 332, 16 Atl. Rep. 497; *Sherwood* v. *Milford Bank* (1892), 94 Mich. 78, 53 N. W. 923.

In a case similar to the principal case, however, it was held that funds must not only be traced to the assets, but must also be shown to remain there. *Shields* v. *Thomas* (1893), 71 Miss. 260, 14 So. Rep. 84, 42 Am. St. R. 458. But the principal case holds that in the absence of evidence to the contrary, the bank will be presumed to have acted in good faith, to have made payments out of its own funds, and that the trust funds are represented in the remaining assets. *Knatchbull* v. *Hallett, supra.* Independent of the statute, the bank's fraud made it a trustee in the principal case. *Craigie* v. *Hadley* (1885), 99 N. Y. 131, 1 N. E. 537, 52 Am. R. 9.

TRUSTS—RULE AGAINST PERPETUITIES.—A testator provided for an accumulation of his estate in the hands of trustees for the gross period of thirty years, without any reference to any life or lives in being, in a state wherein the common law limitation to a life or lives in being, and twenty-one years and nine months thereafter prevailed. *Held*, void as creating an unlawful perpetuity. *Andrews* v. *Lincoln* (1901), 95 Me. 541, 50 Atl. 898, 56 L.R.A. 103.

"Whenever lives in being," said the court, "do not form part of the time of suspension or postponement, the only period under the rule against perpetuities is a twenty-one year absolute. *Kimball* v. *Crocker*, 53 Me. 263."

WILLS—REVOCATION BY BIRTH—WHAT IS PROVISION FOR.—A testator having children at the date of his will gave his property to his wife in fee stating that he knows "that she will take every care of our children, and do what is just and right by each of them." After this a child was born: *Held* that the birth of the child revoked the will, there being therein no provision "made in contemplation of such event," within the meaning of Code § 3347. *Sutton* v. *Hancock* (1902), — Ga. — , 42 S. E. Rep. 214.

In Ohio, under a statute declaring that an after-born child not provided for in the will shall take as in case of intestacy, it was held that the after-born